(1) Include a 6k cfs facility operated according to the NGO's operational scenario (scenario 7) as a co-equal alternative in the EA, subject to same level of analysis as existing 15k cfs facility with the contractors' operations (scenario A).

The Effects Analysis, scheduled to be complete in April, 2012, will define the proposed project to be included in the HCP, scheduled to be submitted to the fish agencies in June, 2012 (on the same day the DEIS/EIR scheduled for release). Currently, the EA analyzes only one proposal in depth:[1] a 15,000 cfs facility (the largest proposed size) with the contractors' proposed set of operations (the most aggressive set of operations that substantially increase diversions from the Delta and that the fish agencies have already said are unlikely to be permitted).[2] The agencies have long anticipated analysis of a greater number of alternatives in the EA, having explained that: "The Five Agencies intend to include these alternative operating criteria *within a wide range of alternatives* that will be evaluated through a detailed Effects Analysis for their biological effects on the covered species, natural communities, and the ecosystem." *See* 5/18/11 5-Agency Memo at 1 (emphasis added). Analyzing an adequate range of alternatives in-depth in the EA will prevent future delays in the timeline. For example, if the fish agencies reject the existing project analyzed in the EA, then the agencies will have sufficient information to proceed with analysis of an alternative proposal. Because the DEIS/EIR will not analyze other alternatives in the same level of detail, it will not have sufficient information to proceed with the HCP application without including another alternative in the EA.

(2) Revise the administrative draft EIS/EIR to state that the fundamental purpose of BDCP, from the State's perspective, is to restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem [*see* Water Code § 85020(c)] and to improve the reliability of the remaining water available for export and other beneficial uses [*see* Water Code § 85320(b)(2)(A)].

The administrative draft EIS/EIR released in December 2011 states that: "DWR's fundamental purpose in proposing the BDCP is to make physical improvements to the SWP system in the Delta necessary both to minimize adverse effects on listed species due to operations of existing SWP pumping plants in the southern Delta and, consistent with its statutory and contractual obligations, to facilitate the delivery, at reasonable costs, of reliable water supplies to SWP contractors." P. 2-4. This purpose statement fails to acknowledge that the purpose of BDCP is

[1] There has been discussion of including a second alternative in the EA: a 15,000 cfs facility with Scenario 6 operations. To date, however, we have not seen any analysis of this alternative. In addition, the Five Agencies explicitly deferred addressing some flow requirements in Scenario 6, indicating that it is unlikely to fully address ecosystem needs. *See, e.g.,* 5/18/11 5-Agency Memo at 1 (Scenario 6 does not address reduced flow below intakes, but "identified reductions in flow remain a concern" that the agencies intend to address), and 4 ("reduced Spring flows, food web productivity, and other stressors remain a concern" and will be addressed later; Scenario 6 does not include fall X2 but "the Five Agencies agree that a range of project operations criteria, including operations that include the Fall X2 action, should be evaluated through a detailed Effects Analysis.")

[2] *See, e.g.,* 9/27/10 Memo from DOI biologists at 2 ("outflow reductions revealed in the proposed project CALSIMII modeling indicate that the project as described would substantially adversely affect delta smelt in the future").

to recover (a much higher standard than "minimiz[ing] adverse effects") covered species (broader than just listed species). It also puts the entire burden of meeting "reliable water supplies to SWP contractors" on the Delta via the SWP, rather than looking more broadly at the wide array of local and regional water supply tools that SWP contractors have available. This project purpose is the standard against which alternatives are developed and measured. It's important to articulate the recovery goals and not overpromise water supply goals.

(3) Revise the administrative draft EIS/EIR to analyze the NGO's operational scenario (scenario 7) over a range of facility sizes (3k, 6k, 9k cfs facility) along with the water supply benefits gained from investing any cost savings associated with building a smaller facility in alternative regional water supplies.

The administrative draft EIS/EIR released in Dec. 2011 identifies an inadequate range of alternatives that are inappropriately focused on increasing exports. Of the 15 alternatives identified in the draft:

- 10 alternatives are based on the largest possible facility: a 15,000 canal or tunnel;
- 3 alternatives are based on the next largest size: a 9,000 cfs canal or tunnel;
- 1 alternative looks at a 6,000 cfs facility; and
- 1 alternative looks at a 3,000 cfs facility.

See Table 3-1 on p. 3-3. The majority of the alternatives include operations that would reduce protections for listed species from today's levels (designed to avoid jeopardy), as opposed to increasing protections from today's levels to achieve the higher standard of recovery. The only proposed consideration of alternative water supplies is in an appendix, looking only at existing conservation programs.

This approach heavily biases the analysis toward the largest, most expensive export facility and an increased level of exports over current levels. It does not provide a sufficient basis for assessing the benefits of a smaller facility with reduced diversions from the Delta.

(4) Expand transparency of BDCP and ensure the use of the best available science by prohibiting staff, consultants and attorneys of the water contractors from participating in technical BDCP meetings between the state and federal agencies and in meetings in which the consultants are given guidance, unless those meetings are open to the public and NGOs, and other interests are specifically invited.

The contractors have an inordinate amount of influence and control over the consultants and their work product. The MOA continues that approach. We are unlikely to get an analysis that addresses our concerns and has the appearance and reality of scientific credibility if the contractors continue to exert this level of influence and control. This change is necessary to ensure that the BDCP responds fully to the ISB's and the NRC's critiques of the EA methodology.